

Committee report

Committee

CABINET

TUESDAY, 13 DECEMBER 2011

Title

NEWPORT HARBOUR ESTATE

Report of

**THE DEPUTY LEADER AND CABINET MEMBER FOR THE
ECONOMY AND THE ENVIRONMENT**

EXECUTIVE SUMMARY

1. The purpose of this Paper is to secure a sustainable future for Newport Harbour, regularise previous property decisions, clarify the extent of the harbour estate, and to lay the foundations for the wider regeneration of the area.
2. The outcomes of this report will be that:
 - Previous freehold and ground leasehold disposal decisions are regularised,
 - Existing leases on the harbour estate land for terms exceeding three years will continue, and
 - The full extent of the Newport Harbour Estate is clarified.

BACKGROUND

3. The Isle of Wight Council is the Harbour Authority for Newport Harbour. As harbour authority the Council has statutory obligations, with which it must comply in its management of the harbour. Amongst these is the need to declare harbour estate as surplus to the harbour authority's requirements for the administration of the harbour before disposing of it permanently for non-harbour related uses. Further is the need to grant leases on harbour estate land for periods no greater than three years.
4. The Isle of Wight Council, through its predecessors, became responsible for Newport Harbour in 1852. The Council's legal powers to operate the harbour are set out in the legal section of this paper. Many of these relate to when Newport Harbour was a commercial working harbour bringing goods to and from the Island via the River Medina.
5. Over the last 50 years there has been a significant decline in commercial waterborne traffic along the River Medina in line with improving road transport networks and the use of heavy goods vehicles. Imported goods arrive at ports in major cargo vessels and it is more convenient to off-load these to heavy goods vehicles that can access the destination directly, rather than off-load onto smaller vessels to navigate rivers and then transfer to road vehicles thereafter.

6. The geographical limits of the waters which comprise Newport Harbour are set out in the Newport (Isle of Wight) Harbour Revision Order 1988 and are defined as, “the inland tidal waters and creeks forming part of the River Medina in the borough shown coloured grey on the signed map being the harbour as it exists immediately before the making of this order and including the harbour estate”. There is a plan accompanying this description which shows Newport Harbour as comprising the water running from the Folly upriver to Newport town centre at Sea Street (this is available as a background paper).
7. In contrast, however, the land adjacent to the harbour water (the harbour estate), whilst being in the 1988 Harbour Revision Order, does not benefit from a plan and is identified solely by the definition as being, “the piers, wharfs, quays, berths, roads, bridges, sheds and other works and conveniences and the land, buildings and property of every description and of whatever nature which are for the time being vested in, occupied or administered by the Council for the purposes of the Newport (Isle of Wight) Harbour Act and Orders 1852 to 1988”.
8. What constitutes the harbour estate therefore depends on the interpretation of this definition and its translation to the land and property adjacent to the harbour waters. Such interpretation will vary from time to time depending on the actual use of the land and how it is being administered.
9. In addition the Council owns considerable parcels of land adjacent to the harbour which has been acquired over time for different purposes (such as the former railway land on the west bank). This land is included in the Registered Title plan in appendix 1 and it is relatively easy to confuse where the land held by the Council in its capacity as a local authority ends and that which it holds as the harbour authority begins.
10. Ultimately it is the Council as a body corporate that is the registered owner of all of this land irrespective of the purposes for which it is held. This further adds to the confusion about the land and buildings that form the harbour estate which can only be determined on a case by case basis by considering whether any given building, structure or plot of land falls within the definition set out in the legislation and provided in paragraph 7 above.
11. To ensure that harbour estate can be managed effectively the Council would be best served by identifying and agreeing the extent of the Newport Harbour Estate on a plan. This will enable it to identify which land and properties it is managing as the harbour authority and which it is managing as local authority. It must be recognised that this plan can not replace the written definition of the harbour estate but it will provide an important guide as to the Council’s intentions for its land holdings in the harbour area.
12. In order to create a defining plan officers have reviewed historic plans from 1863 onwards of the land that Council owns and controls in and around the harbour. This has created a picture of land usage and what may have fallen within the harbour estate definition. In particular the more recent usage of this land has been reviewed to ascertain whether current occupation meets with the definition of harbour estate and, if not, how long these areas of land have been in non harbour related use. The proposed plan to define the extent of the harbour estate, produced as a result of this review is attached at appendix 2 to this paper.

13. The Council as the harbour authority has the ability to dispose of harbour estate provided it first passes a resolution stating that the land is surplus to requirements and that it is no longer required for the administration of the harbour.
14. The Council as the local authority has the power to both dispose of and acquire assets consistent with the delivery of its objectives as a local authority. Therefore should the Council acting as harbour authority declare harbour estate surplus to its requirements it is within the powers of the Council, as the land owner, to use that land for its own purposes as local authority. This includes declaring the land surplus to requirements in order to dispose of it for best consideration, under section 123 of the Local Government Act 1972.
15. Over many years there have been a number of disposals of land and property that could be considered to be part of the harbour estate (depending on how its definition is interpreted) that have been undertaken to enable development and regeneration of the area. These disposals have however been achieved in compliance with the Council's constitution (as it applies to land held in its ownership and for local authority purposes) by being declared surplus to Council requirements and with the disposal decision being formally approved by the relevant Committee, Executive or Portfolio Holder of the Council. These disposals are, therefore, proper and valid decisions of the Authority.
16. This is of particular importance as it relates to one of the recent formal objections (allegations of unlawful items of account) to the Council's accounts for the year ending 31 March 2010, with specific reference to the Newport Harbour accounts. These objections have been thoroughly investigated by the District Auditor, which has confirmed that such disposals are permissible.
17. Section 23 of the Harbour, Docks and Piers Clauses Act 1847 precludes the Council as harbour authority from granting occupation of parts of the harbour estate to third parties for any longer than three years. However, a number of such leases have been granted following due Council process, and in accordance with the terms of the Landlord and Tenant Act 1954. These are all listed in appendix 3 to this report.
18. The three year limitation on occupation of the harbour estate is a major hurdle to the occupation, development and regeneration of the harbour. It is likely that it prevents investment in the harbour by commercial operators who would not see sufficient return on any investment in such a short period of time (three years) to make their occupation worthwhile. On the same basis, regeneration of the harbour as a whole would only be likely to be achieved over a significant period of time and could not reasonably be completed in three years.
19. The three year restriction on the occupation of the harbour estate as set out in the 1847 Act has only recently been highlighted. Once this restriction was known and understood further leases or disposals of possible harbour estate have not been permitted in contravention of it.
20. The Council, as harbour authority, has two courses of action open to it regarding these historically granted leases that exceed the three year maximum term as prescribed in the 1847 Act. The first is to allow the leases to continue, and the second is to terminate them and face the resulting significant liability in terms of compensation to the tenants. In choosing which action to adopt the Council will want to consider how each would

impact on the overall operation and financial viability of the harbour and be assured that the action to be taken is in the overall best interests of the harbour and the Council.

21. Future regeneration of the Newport Harbour Estate, in line with the Core Strategy of the Island Plan and the emerging Area Action Plan for the Medina Valley, is likely to require occupation for terms in excess of three years. At the point that any such development is proposed, the land will need to be explicitly declared surplus to the harbour authority's requirements as no longer required for the administration of the harbour to enable such long term investment and redevelopment.

STRATEGIC CONTEXT

22. Clarifying the extent of Newport Harbour Estate and ratifying the previous disposal decisions will enable the potential regeneration of parts of Newport Harbour and, in this way, this report supports the Council's key strategic corporate priority of "Regeneration and the Economy", and will help promote inward investment and regeneration of this important site.
23. It also has the potential of delivering operational revenue savings within the harbour area and of delivering improved income and, therefore, will contribute to the key strategic corporate objective of Delivery of Budget Savings through Changed Service Provision.

CONSULTATION

24. Advice and direction received from the District Auditor (Audit Commission) following its review of the harbour accounts has been reflected in the recommendations made in this report. .

FINANCIAL/BUDGET IMPLICATIONS

25. Clarifying the extent of Newport Harbour Estate and ratifying previous disposal decisions will protect the Council's current financial position in respect of the harbour estate.
26. If, however, the decision relating to the leases for terms exceeding three years was to terminate them and grant new leases for a maximum of three years then the Council would face substantial compensation claims, which would adversely impact on the harbour accounts.
27. If any harbour estate land is declared surplus to requirements as a result of the clarification to the extent of the harbour estate there is the potential for regeneration and investment which could result in future capital receipts to the Council and in the interim there is the potential for letting existing buildings for terms longer than 3 years that could result in improved revenue income.

CARBON EMISSIONS

28. Clarifying the extent of Newport Harbour Estate, and ratifying previous decisions made are unlikely to directly impact upon the Council's carbon emissions. However, if this enables regeneration of the harbour, with land and buildings passing into the ownership of others, this may reduce such emissions in the future.

LEGAL IMPLICATIONS

29. The predecessors of the Isle of Wight Council became responsible for Newport Harbour in 1852 by virtue of the River Medina Navigation Act. The Council's powers and duties are contained in a number of statutes and harbour revision orders ranging from the Harbour, Docks and Piers Clauses Act 1847 to the Newport (Isle of Wight) Harbour Revision Order 1988.
30. There is a significant amount of local legislation specific to Newport Harbour, including the River Medina Navigation Act 1852, the River Medina Navigation Order 1898, the Newport (Isle of Wight) Harbour Revision Orders 1968 and 1988. In addition to these there are other statutory provisions affecting Newport Harbour relating to harbours in general, such as the Harbour, Docks and Piers Clauses Act 1847, the Harbours Act 1964 and the Docks and Harbours Act 1966.
31. Legal advice has addressed a number of issues on behalf of the Isle of Wight Council, including the duties and powers of the Council in relation to the harbour and, specifically, what constitutes the harbour estate and whether the Council can dispose of harbour estate.
32. This advice is that the disposal of harbour estate can be achieved if the Council, as harbour authority, formally resolves that a property is surplus to its requirements and therefore no longer required for the administration of the harbour. This matter was also considered in some detail by the Audit Commission in its response, of August 2011, to the objection to the harbour accounts and, after taking its own legal advice, the Audit Commission confirmed that the Council's position was correct. It confirmed that the capital receipt generated from any disposal in this way could be paid into the Council's corporate account and not the harbour account.
33. Should any land be determined to no longer be needed for harbour purposes it can be disposed of for best consideration under Section 123 of the Local Government Act 1972 which provides specifically for the disposal of land in local authority ownership. Section 122 of the same Act also confers a power on the Council to "appropriate for any purpose for which the Council is authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation".
34. Legal advice has also identified the restriction under the 1847 Harbour, Docks and Piers Clauses Act against granting occupation of any premises within the harbour estate for a term in excess of three years. However, such leases have been granted over the years in good faith and in accordance with the Council's (as local authority) normal processes and the 1954 Landlord and Tenant Act and are therefore valid.
35. In granting leases of over 3 years in the past, in relation to Harbour Estate, the Council has technically acted beyond its powers, in that it did not have the authority to do so as the 1847 Act specifically restricts the length of time a lease can be granted for. The leases are deemed in law to be valid unless declared otherwise by a court. A court would, in considering whether the leases are valid, have regard to the tenants' rights, and whether it would be proportionate to interfere with their rights granted under the leases as compared to the public interest in ending the leases.

36. The Audit Commission has also taken legal advice on the 1847 Act restrictions and recognises that the Council accepts the limits on its powers and has not granted any further leases in excess of three years and the Auditor “considers that the Council’s explanation of why it has not taken any action in relation to the ongoing leases of harbour estate that have been granted for longer than three years is reasonable”.

PROPERTY IMPLICATIONS

37. As this is principally a property based report there are not considered to be any additional property implications that require highlighting in this section.

EQUALITY AND DIVERSITY

38. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to impact assess its service, policies/strategies and decisions with regards to diversity legislation and the nine “protected characteristics”. None of the identified groups are likely to be adversely discriminated against by the recommendations in this paper. Any subsequent decisions in respect of regeneration or specific disposals will have equality impact assessments undertaken on a case by case basis at the relevant time.

SECTION 17 CRIME AND DISORDER ACT 1998

39. There are not believed to be any adverse crime and disorder issues relating to this report, although surplus properties that remain vacant (such as the Vectis Building within the harbour) can be prone to vandalism, particularly if the surrounding area appears partially run down. It is therefore in the Council’s best interest to clarify its position in respect of the harbour and to enable redevelopment or regeneration as soon as practicable.

OPTIONS

- (i) To confirm the extent of the Newport Harbour Estate as shown in the proposed defining plan in appendix 2 and that all property outside of the area and listed in appendix 3 was surplus to the harbour authority’s requirements and has been disposed of as it was no longer required for the administration of the harbour.
- (ii) To agree that there is no compelling public interest in terminating the existing leases granted for longer than three years (as shown in appendix 3) and therefore to allow these leases to continue.
- (iii) Not to confirm the extent of Newport Harbour Estate as set out in appendix 2 or that the property outside of the area and listed in appendix 3 was disposed of because it was surplus to the harbour authority’s requirements.

RISK MANAGEMENT

40. There is a high risk that the Council will be unable to ensure the effective regeneration and use of the Newport Harbour area without having a clear statement and description of what constitutes the harbour estate to inform how the Council will manage and develop that estate. The production of a definitive plan of the harbour estate as set out in appendix 2 to this report mitigates against this risk. It also reduces the risks of the

Council having to defend further expensive challenges to its management of the harbour estate.

41. Whilst previous formal decisions have been taken by the relevant Committee, Executive or Portfolio Holders of the Council in respect of the disposal and transfer of land for other uses these were undertaken on the basis of those parcels of land being surplus to Council requirements. There is, therefore, still potential for these to be challenged as the land has been removed from the harbour estate without an explicit declaration of being surplus to harbour requirements. The risk of a successful challenge is considered to be very low, however this does not reduce the risk of a challenge being made and the potential of a considerable cost to the Council in defending such a challenge. The approach suggested in option (i) mitigates against this risk.
42. There is a high financial risk if the current leases exceeding three years were to be terminated as the cost could be substantial and would reflect directly against the harbour accounts. This would negatively impact on the viability of the harbour.
43. Retaining the current position, and making no decision, will not address either of the previous risks and, therefore, comprises a high risk for the reasons given.

EVALUATION

44. It has been the Council's practice over many years to align its activities as harbour authority and local authority into a single coordinated management and governance function. Whilst this provides the most effective way of managing Newport Harbour as part of the Council, it has led to ambiguity regarding what is land held by the Council as harbour authority and by the Council as local authority.
45. Central to removing the ambiguity in respect of the harbour is the identification of which land and property the Council considers to be harbour estate and therefore subject to the provisions of various statutory requirements, but especially the Newport (Isle of Wight) Harbour Revision Order 1988. The Council may consider a wide ranging consultation exercise in this regard but ultimately it is the Council's responsibility to act reasonably in producing the definitive plan of the areas that it considers to be the harbour estate. The production of a definitive plan will reduce future officer time in establishing whether a particular building or parcel of land is part of the harbour estate and will also reduce the potential for challenge on the same basis.
46. The defining plan proposed in appendix 2 has been objectively produced by reviewing historic plans of the harbour area alongside the statutory definition, to establish the pattern of use with particular reference to what is occurring at present and the usage of various areas in recent memory. The intention in producing a plan is to provide a clear indication of the land and property that will in the future be considered by the Council to be the harbour estate. Any land and property that falls outside of the area proposed in appendix 2 will then be treated as land held for local authority purposes and subject to the Council's agreed processes for disposal or development. It will still be within the Council's (as harbour authority) ability to declare, at some future date, that any of the remaining land and property within the proposed harbour estate (appendix 2) is surplus to the requirements of the harbour authority and no longer required for the administration of the harbour. Such a decision would need to be taken independently of a decision of the Council to then dispose of the same property. In reality this is no different to the systems operated by the Council that require a Service to declare an

asset surplus to its requirements before the Council would consider undertake its disposal.

47. The resolution of the Council's position in respect of the freehold and long leasehold disposals of land and property that some may consider being harbour estate is also of immense importance in clarifying the Council's position in respect of the harbour. All of these disposals have been achieved following formal decisions by the relevant Committee, Executive or Portfolio Holders of the Council. These decisions were, however, undertaken on the basis of those parcels of land being surplus to requirements as local authority assets in line with decisions on other Council land where similar transactions have taken place. However expert legal advice is that these decisions also required the benefit of the land being explicitly declared surplus to harbour purposes in order to ensure total compliance with relevant harbour legislation. It is therefore appropriate and consistent with the agreement made with the District Auditor that an explicit declaration is retrospectively made in respect of those properties that are outside of the area now proposed to be the harbour estate in appendix 2.
48. The District Auditor has determined that the income from leases exceeding three years will not be declared unlawful as the Council has recognised its error and implemented a process to prevent future breaches; termination could result in successful compensation claims; and the expense of making a claim to court to declare the income unlawful is high and would be borne by the taxpayer.
49. It could be argued that a maximum lease period of only three years is now a considerable disadvantage to the Council in seeking to secure harbour related uses of the harbour estate. It acts to discourage most commercial uses as very few parties would be prepared to invest in a business venture when they have occupation for such a short period of time giving little opportunity to achieve a return on their investment and no security of tenure to renew the lease under the Landlord and Tenant Act 1954. Future regeneration of the Newport Harbour Estate is, therefore, likely to require consideration as to whether any further land or buildings should be explicitly declared surplus to requirements to enable such long term investment and redevelopment. However, any such declarations would be subject to a further report.
50. There is a strong need for certainty and clarity regarding the extent of the harbour estate given the ambiguities that exist and the challenges made; considerable research has been therefore been undertaken to inform the recommendations made within this report. It is not believed that further investigation or research will provide any greater clarity in defining the harbour estate than is set out in this paper. Further delays in coming to a conclusion about the extent of the estate (to undertake more research and/or consultation) would therefore not be beneficial and may lead to further scope for challenge and further delay in seeking opportunities to secure the regeneration of the harbour area.
51. Likewise, retaining the status quo by taking no decisions will only continue the current ambiguity and lack of clarity, and it will not enable regeneration particularly as the Council is not in a position to undertake this itself. Any development of the harbour in this way would require significant funds in order to upgrade and make good much of the land and property that could considered being part of the harbour estate. This work has not been formally costed but is thought likely to run into millions of pounds. The current financial pressures impacting the Council and the need for it to prioritise resources towards its key corporate priorities and core business mean that the Council (as harbour

or local authority) is not in a position to provide such a level of investment into the harbour and harbour estate, more especially when there is no strong business case to suggest that significant commercial activity would be achieved through the investment.

RECOMMENDATION

52. It is therefore recommended that the Council adopts Options (i) and (ii), namely:

(i) To confirm the extent of the Newport Harbour Estate as shown in the proposed defining plan in appendix 2 and that all property outside of the area and listed in appendix 3 was surplus to the harbour authority's requirements and has been disposed of as it was no longer required for the administration of the harbour.

(ii) To agree that there is no compelling public interest in terminating the existing leases granted for longer than three years (as shown in appendix 3) and therefore to allow these leases to continue.

APPENDICES ATTACHED

53. [APPENDIX 1](#) – Council owned land - Registered Title plan.
[APPENDIX 2](#) – Plan showing proposed extent of Newport Harbour Estate
[APPENDIX 3](#) – List of those disposals and long term lettings requiring ratification

** Due to the large size of the documents, Appendices 1 and 2 can be available to view in hard copy in County Hall Reception*

BACKGROUND PAPERS

- Isle of Wight Council Unitary Development Plan
- Newport Harbour Supplementary Planning Guidance
- Island Plan Core Strategy
- 1988 Revision Order Newport Harbour Plan
- District Auditor's letter, 23 August 2011

Contact Point: Barry Cooke, Strategic Manager: Assets,
☎ 01983 823266 e-mail barry.cooke@iow.gov.uk

STUART LOVE
Strategic Director
Economy & Environment

COUNCILLOR GEORGE BROWN
Deputy Leader and Cabinet Member for the
Economy and the Environment